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Larry E. Craig, Chairman
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Legislative Notice

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S. 1723 — The American Competitiveness Act

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Reported April 2, 1998, by the Senate Judiciary Committee, with an amendment in the nature of a substitute, by voice.

NOTEWORTHY

- At press time, it was anticipated S. 1723 would come before the Senate early this week under a yet-to-be-determined unanimous consent agreement limiting both amendments and time for consideration. However, no votes will occur on the bill before noon on Tuesday, May 12.
- S. 1723, introduced by Judiciary Immigration Subcommittee Chairman Abraham, raises the current cap for temporary foreign workers (referred to as category H1-B) to 95,000 in fiscal year 1998 and a maximum of 105,000 in fiscal year 1999 and 115,000 for fiscal years 2000 through 2002.
- The bill creates a new H1-C temporary foreign visa category for health care assistants. Beginning with fiscal year 1999, the category is capped at 10,000 workers.
- The bill also increases the authorization to $155 million for educational grants for mathematics, computer and engineering degrees for disadvantaged, low-income students. It provides authorization of $8 million for an Internet data bank to allow technology job searches as well as matching applicants with available technology jobs. It also authorizes $10 million to provide training opportunities in information technology.
- S. 1723 contains a five-year sunset for the additional H1-B visas.

BACKGROUND

Earlier this year, the Senate Judiciary Immigration Subcommittee held a hearing on the apparent high-tech worker shortage and U.S. immigration policy. In response, Chairman Abraham introduced the "American Competitiveness Act."

According to a March 31 letter of support to Senator Abraham, 14 of our nation's high-technology CEOs expressed support for S. 1723:

> "Let us be clear about what is at stake: *Failure to address current and future worker shortages could mean a loss of America's high technology leadership in the world.* A short term solution is to raise the cap on the H-1B visa. The long-term solution, and one in which each of our companies is already engaged, lies in preparing more American students for the high technology workforce of the future."

The bill deals with an Immigration and Naturalization Service program for temporary foreign workers who are admitted to the United States under a nonimmigrant category, a part of the INA (Section 101(a)(15)(H)). Such workers are admitted for a limited time and with specific restrictions, depending on the occupation. The H1-B temporary foreign worker program requires foreign workers to have some "theoretical and practical application of a body of highly specialized knowledge" and "attainment of a bachelor's or higher degree in the specific specialty (or the equivalent) as a minimum." [8 U.S.C. §1184(i)(1)]

An employer wishing to hire a temporary foreign worker must attest to the Department of Labor that he or she: "will pay ... the greater of the actual wages paid other employees in the same job or the prevailing wage for that occupation; "will provide working conditions ... that do not cause the working conditions of the other employees to be adversely affected; and will not cause a "strike or lockout" [CRS, *Immigration: Nonimmigrant H1-B Specialty Worker Facts and Issues*, Ruth Ellen Wasem, March 19, 1998].

According to 1997 Department of Labor figures, of the occupational classifications certified as open for H1-B foreign workers in 1997, the largest portion, composing 44.4 percent, were for computer-related fields, such as system analysis/programming; computer systems technical support; data communications and networks; computer system user support; and other computer-related occupations. The next largest classifications certified as open were for therapists and electrical/electronic engineers, composing 25.9 and 3.1 percent respectively.

BILL PROVISIONS

Section 1: Short Title

Section 2: Findings

Section 3: Increased Access to Short Term Temporary Workers

- Establishes a new H1-C short-term temporary visa category for health care workers, other than physicians. Beginning with fiscal year 1999, this visa category may not exceed 10,000 persons.

- Establishes five-year annual ceiling for current H1-B and newly created H1-C temporary workers:

  — for fiscal year 1998, the H1-B category may not exceed 95,000 persons;

  — for fiscal year 1999, the H1-B category may not exceed the 1998 level minus 10,000 plus the number of unused visas in the H2-B, unskilled workers category [maximum of 105,000 temporary workers];

  — for fiscal years 2000 through 2002, the H1-B category may not exceed the 1998 level minus 10,000 plus the number of unused visas in the H2-B unskilled workers category plus the number of unused visas in the H1-C health care workers category [maximum of 115,000 temporary workers].

    — No more than 20,000 unused visas from the H2-B unskilled workers category may be used for fiscal years 1999 through 2002.

Section 4: Education and Training in Science and Technology

- Provides $155 million authorization for fiscal year 1999 (an additional $50 million over current levels) for Subpart 4 of Part A of title IV of the Higher Education Act. This section deals with special programs for students from disadvantaged, low-income backgrounds.

- At least $25 million but not to exceed $50 million for each fiscal year shall be made available to the states in the form of matching grants.

- Grants awarded under this section must be used by students for associate, baccalaureate or graduate degrees in mathematics, computer science or engineering.

- Provides authorization of $8 million for fiscal years 1999 through 2003 for an Internet data bank to allow technology job searches as well as matching applicants with available technology jobs.

- Provides authorization of $10 million for fiscal years 1999 through 2003 to provide training opportunities in information technology.

Section 5: Enforcement Penalties

- Increases standard needed to initiate an investigation from a simple "failure to meet" to a "willful failure to meet a condition" for application or a "willful misrepresentation of a material fact in an application."

- Increases penalties for willful failure to meet a condition for application or willful misrepresentation within an application from $1,000 to $5,000.

- After an employer is found to have engaged in "willful failure to meet a condition" or "willful misrepresentation," the Secretary of Labor may conduct random inspections for a period of five years only.

- If an employer is found to have engaged in a "willful failure to meet a condition" or "willful misrepresentation of material fact" within the application process *and* is found to have replaced a U.S. worker with a H1-B or H1-C temporary alien worker within six months prior to or within 90 days following the filing of an application:

  — the Secretary of Labor may impose remedies as well as penalties not exceeding $25,000 per violation, and

  — the Attorney General shall not approve any more petitions for visas for a period of at least two years.

- Requires a "prevailing wage" determined pursuant to either government or nongovernment published surveys.

- Requires "conspicuous" posting of job opportunities before petitioning for temporary alien workers.

Section 6: Reports on H1-B Visas

- Requires the Attorney General to submit quarterly reports on the numbers of aliens provided H1-B status.

- Requires the Attorney General to submit annual reports on the occupations and compensation of aliens provided H1-B status.

Section 7: Report on High-Technology Labor Market Needs

- Requires the National Academy of Sciences to establish a government-industry panel to study the labor market needs for workers with high-technology skills during the 10-year period beginning on the date of enactment.

- The report is to be submitted no later than October 1, 2000.

- Funds for the study are authorized within the funding for the National Science Foundation.

Section 8: Lifting Per Country Ceilings for Employment-Based Immigrants

- Currently, permanent employment-based immigration visas are distributed so that no one country can be given more than seven percent of the total visas, currently capped at 140,000 per year. This section would lift the per-country limitation on any country that exceeds its ceiling in any calendar quarter.

- Allows any temporary alien worker who has applied for permanent employment-based immigration to remain in the United States until the petition has been processed and a decision made.

Section 9: Academic Honoraria

- Allows visiting scholars and aliens with similar visas to accept honoraria and incidental expenses for usual academic activities.

ADMINISTRATION POSITION

The Administration submitted a statement to Chairman Hatch on April 2, 1998, signed by Attorney General Janet Reno, Secretary of Commerce William Daley and Secretary of Labor Alexis Herman. It stated that "the Administration strongly opposes S. 1723."

"The Administration believes that the first step in increasing the availability of skilled workers must be raising the skills of U.S. workers and helping the labor market work better to match employers with U.S. workers. Therefore, substantial additional efforts by industry to increase the skill level of U.S. workers and needed improvements in the H1-B visa program are necessary prerequisites for the Administration to support any short-term increases in the number of visas for temporary foreign workers. Since 1993, this Administration has sought reforms of the H1-B program. . . .These reforms, if enacted, would help target H1-B usage to industries and employers that are experiencing skill shortages.

"Regrettably, S. 1723, as introduced, emphasizes providing opportunities for foreign workers rather than providing for and protecting U.S. workers . . .. Moreover, rather than strengthening program requirements and enforcement to prevent employer abuses of the H1-B program, S. 1723 undermines some of the program's important enforcement provisions."

The letter also notes its support for the Kennedy/Feinstein substitute, offered and rejected during the full committee markup, saying that language is, "on the whole, consistent with the objectives we have articulated."

POSSIBLE AMENDMENTS

Kennedy/Feinstein substitute. The amendment increases preconditions on employers for hiring H1-B workers including additional "no layoff" protections for U.S. workers; a limitation on visa terms from six to three years; open-ended investigative authority for the Department of Labor to lessen employer abuses; and a new $250 fee for applications submitted for each H1-B worker.

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